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19
20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE DISTRICT OF ARIZONA**

22 Cecil C. Garrett, individually and as a
23 representative of the Classes,
24 Plaintiff,
25 v.
26 Advantage Plus Credit Reporting, Inc.,
27 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

28
29 Cecil C. Garrett (“Plaintiff” or “Mr. Garrett”), who is a living, breathing consumer,
30 brings this Class Action Complaint against Advantage Plus Credit Reporting, Inc.
31 (“Defendant” or “Advantage Plus”), on behalf of himself and the Classes set forth below:
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INTRODUCTION

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2 1. This is a class action for violation of the Fair Credit Reporting Act (“FCRA”),
3 15 U.S.C. §§ 1681, *et seq.*, against a consumer reporting agency that falsely reports that
4 consumers are deceased, even when it has clear evidence in its possession that the
5 individuals in question are very much alive, and also reports adverse information older than
6 the seven (7) years allowed by statute.

7 2. The computerization of our society has resulted in a revolutionary increase
8 in the accumulation and processing of data concerning individual American consumers.
9 Data technology allows information concerning individual consumers to flow
10 instantaneously to requesting parties. Such timely information is intended to lead to faster
11 and better decision-making by its recipients and, in theory, all of society should benefit
12 from the resulting convenience and efficiency.

13 3. However, this information has also become available for, and subject to,
14 mishandling and misuse. Individual consumers can and do sustain substantial damage
15 when inaccurate or outdated information is disseminated about them.

16 4. The technological advances in the area of data processing have resulted in a
17 boon for the companies that accumulate and sell data concerning individuals’ credit
18 histories and other personal information. Such companies are known as consumer reporting
19 agencies (“CRAs”).

20 5. The “Big Three” major national CRAs are Equifax Information Services,
21 LLC (“Equifax”), Experian Information Solutions, Inc. (“Experian”), and Trans Union,
22 LLC (“Trans Union”).

23 6. The Big Three sell credit information to paying subscribers (i.e., lenders,
24 retailers, landlords, potential employers, and others) concerning individuals who may be
25 applying for a mortgage, other credit, housing, or employment.

26 7. The Big Three also sell credit information to “reseller” CRAs, such as
27 Defendant Advantage Plus, who assemble and merge the credit information obtained from
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1 each of the Big Three into a 3-bureau credit report, also known as a “tri-merge” or “merged
2 infile” credit report. Defendant combines this information, adds its own summary of the
3 three CRAs’ data, and then sells the completed report to mortgage lenders throughout the
4 country.

5 8. In the parlance of the FCRA, both the information sold by the Big 3 to the
6 resellers and the information sold by resellers to the resellers’ customers constitute
7 “consumer reports.” 15 U.S.C. § 1681a(d).

8 9. Lenders use tri-merge reports because they want to review credit information
9 from all of the Big Three credit bureaus to ensure that they do not make loans based on an
10 incomplete picture of the credit applicant’s financial position.

11 10. Lenders who use tri-merge reports rely on credit scores generated by running
12 standard algorithms against *each* of the Big Three’s credit files. Tri-merge reports often
13 contain three credit scores (one for each Big Three CRA), with the difference in scores
14 being accounted for both by variations among each of the Three’s data as well as
15 differences in the scoring algorithms applied by each.

16 11. Since 1970, when Congress enacted the FCRA, federal law has required all
17 CRAs, including resellers like Defendant, to implement and utilize reasonable procedures
18 “to assure maximum possible accuracy” of the personal, private, and financial information
19 that they compile, assemble, merge, and sell about individual consumers. 15 U.S.C. §
20 1681e(b).

21 12. One of the primary purposes in requiring CRAs and resellers to assure
22 “maximum possible accuracy” of consumer information is to ensure the stability of our
23 banking system:

24 The banking system is dependent upon fair and accurate credit reporting.
25 Inaccurate credit reports directly impair the efficiency of the banking system,
26 and unfair credit reporting methods undermine the public confidence which
27 is essential to the continued functioning of the banking system.
28

1 See 15 U.S.C. § 1681(a)(1).

2 13. The preservation of consumers' good names and reputations is also at the
3 heart of the FCRA's purposes:

4 [W]ith the trend toward computerization of billings and the establishment of
5 all sorts of computerized data banks, the individual is in great danger of
6 having his life and character reduced to impersonal "blips" and key-punch
7 holes in a stolid and unthinking machine which can literally ruin his
8 reputation without cause, and make him unemployable or uninsurable, as
9 well as *deny him the opportunity to obtain a mortgage or buy a home. We*
10 *are not nearly as much concerned over the possible mistaken turn-down of a*
11 *consumer for a luxury item as we are over the possible destruction of his*
*good name without his knowledge and without reason. * * * [A]s*
Shakespeare said, the loss of one's good name is beyond price and makes
one poor indeed (emphasis added).

12 *Bryant v. TRW, Inc.*, 689 F.2d 72, 79 (6th Cir. 1982) (quoting 116 Cong. Rec. 36570
13 (1970)).

14 14. Congress also determined that adverse information must be allowed to age
15 off consumer reports after a certain time. Under 15 U.S.C. § 1681c(a), most adverse
16 information must be excluded from a report after seven years.

17 15. In light of these findings and purposes, Congress specifically noted "a need
18 to insure that [CRAs] exercise their grave responsibilities with fairness, impartiality, and
19 respect for the consumer's right to privacy." See 15 U.S.C. § 1681(a)(4).

20 16. This class action seeks statutory and punitive damages, costs, and attorneys'
21 fees for Plaintiff and the Classes against Defendant Advantage Plus for its willful violations
22 of the FCRA, by inaccurately reporting that Plaintiff and members of the Classes were
23 deceased, and improperly including outdated adverse information on reports.

24 **THE PARTIES**

25 17. Plaintiff Cecil C. Garrett ("Plaintiff" or "Mr. Garrett") is a natural person
26 who lives in Clermont, Florida and is a "consumer" as that term is defined in 15 U.S.C. §
27 1681a(c).

1 24. Advantage Plus's customers, in turn, use that information to make decisions
2 as to whether to extend credit to a particular consumer and for other purposes permitted
3 under the FCRA.

4 25. The process by which the Big Three receive, sort, and store information is
5 largely electronic.

6 26. The Big Three take the credit, public record, and other information reported
7 by furnishers and use it to create consumer credit files.

8 27. The Big Three maintain credit files on more than 200 million consumers.

9 28. When Advantage Plus requests credit information from the Big Three for a
10 particular consumer, the Big Three send raw credit data to Advantage Plus electronically.

11 29. Advantage Plus does nothing to ensure that the credit information it receives
12 is, in fact, accurate.

13 30. After receiving the raw credit data from the Big Three for a particular
14 consumer, Advantage Plus assembles, merges, normalizes, and summarizes that data into
15 a tri-merge credit report.

16 31. As far as Advantage Plus is concerned, accuracy means outputting the same
17 credit data that it received from the Big Three without alteration.

18 32. Advantage Plus does not analyze the accuracy of the underlying credit data
19 it receives from the Big Three in any way, but merely accepts it at face value.

20 33. Advantage Plus does not take any action to determine if the information it
21 receives from one of the Big Three is facially incompatible with information received from
22 another of the Big Three.

23 34. Advantage Plus does not employ reasonable procedures to assure the
24 maximum possible accuracy of the credit information it includes in the tri-merge credit
25 reports it sells to mortgage lenders throughout the country.

26 **Advantage Plus's Practices Concerning the Sale of Reports on the "Deceased"**
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1 35. Advantage Plus sells thousands of tri-merge credit reports each year, and also
2 sells credit scores.

3 36. Advantage Plus sells tri-merge credit reports and credit scores to various
4 markets, including but not limited to the mortgage financing and lending industry.

5 37. Pursuant to 15 U.S.C. § 1681e(b), Advantage Plus is required “to follow
6 reasonable procedures to assure maximum possible accuracy of the information concerning
7 the individual about whom the report relates.”

8 38. Advantage Plus routinely sell credit reports for *living* consumers with active
9 credit histories which include a notation indicating that the *living* consumer is “deceased”
10 and therefore does not have a credit score.

11 39. Advantage Plus does not independently verify with any source that a
12 consumer is, in fact, deceased before placing a “deceased” notation on that consumer’s tri-
13 merge credit report.

14 40. Advantage Plus does not employ any procedures *at all* to assure that a
15 consumer with a “deceased” notation on his/her tri-merge credit report is, in fact, actually
16 deceased before including the “deceased” notation on that consumer’s report and selling
17 that report for profit.

18 41. Even in instances where other data on the face of the consumer’s tri-merge
19 report indicates that the consumer is alive, such as a current and active credit history,
20 Advantage Plus employs no procedures to assure that a consumer with a “deceased”
21 notation on their report is, in fact, actually deceased before including the “deceased”
22 notation in that consumer’s file.

23 42. That is, when it receives information from one of the Big Three that a
24 consumer is deceased, and information from another of the Big Three that is incompatible
25 with that information – such as an active credit score (indicating the other agency does not
26 believe the consumer is deceased), and open accounts with a very recent payment history
27 – Defendant makes no investigation.

28

1 43. Once a “deceased” notation is included in a consumer’s report from one of
2 the Big Three, Advantage Plus cannot provide a credit score for that consumer for that
3 member of the Big Three.

4 44. Instead, when Advantage Plus sells a report with a “deceased” notation to a
5 third party, it reports that consumer’s credit score as “N/A,” for that member of the Big
6 Three, while simultaneously providing scores based on the data from the other of the Big
7 Three.

8 45. Advantage Plus knows that third-party credit issuers require a credit score
9 from *all* of the Big Three in order to process a given credit application.

10 46. Advantage Plus also knows that consumers without credit scores from *all* of
11 the Big Three are unable to secure credit from most credit issuers.

12 47. Advantage Plus also knows that living consumers are routinely turned down
13 for credit specifically because it is reporting them as “deceased” and without a credit score.

14 48. Advantage Plus has been put on notice through consumer disputes that living,
15 breathing consumers are turned down for credit specifically because it is reporting them as
16 “deceased” and without a credit score.

17 49. Nevertheless, Advantage Plus has an automated process in place that accepts
18 all credit data received from the Big Three as accurate and employs no procedures to assure
19 that a consumer marked as “deceased” by at least one of the Big Three on their tri-merge
20 credit report is, in fact, deceased.

21 50. Advantage Plus has no independent procedure to change an erroneous
22 deceased status on its own, and merely parrots the credit information it receives from the
23 Big Three.

24 **Advantage Plus’s Practices Concerning the Reporting of Outdated Information**

25 51. Advantage Plus is aware of the statutory requirement that it not report
26 adverse records older than seven years.

1 52. However, Advantage Plus takes no effort to comply with the statutory
2 requirement – it conducts no review of the information it receives from the Big Three to
3 determine if it is reportable or not. Instead, it merely parrots the credit information it
4 receives from the Big Three, regardless of whether it is reportable under the law.

5 53. Congress has made a policy determination that adverse information older
6 than seven years should not be provided by consumer reporting agencies. 15 U.S.C. §
7 1681c(a). Numerous states have recognized that the reporting of old adverse information
8 harms consumers and imposed similar bans. *See, e.g.*, N.Y. Gen. Bus. Law § 380-j; Tex.
9 Bus. & Com. Code Ann. § 20.05; Cal. Civil Code § 1786.18(a)(7); N.H. Rev. Stat. Ann. §
10 359-B:5. By failing to provide consumers with the “fresh start” mandated by Congress,
11 Defendant did concrete harm.

12 54. By reporting outdated adverse information which Congress has deemed
13 unreportable, Defendant also invaded consumers’ privacy. This invasion of privacy was a
14 concrete harm. In passing 15 U.S.C. § 1681c, Congress recognized a privacy right that is
15 attached to old information, even information that exists in public records. The connection
16 between forbidding the reporting of old information and protecting consumers’ privacy
17 rights is well-established. *See King v. General Information Services Inc.*, 2:10-cv-06850,
18 ECF No. 52 at 14 (E.D. Pa.) (Brief of the United States, arguing that “Section 1681c’s
19 restrictions on disclosing older adverse information serve the governmental interest in
20 protecting individuals’ privacy.”).

21 55. Defendant failed to use an appropriate algorithm to exclude outdated
22 information, in spite of the fact that it easily could have done so and that these types of
23 algorithms are standard in the credit reporting industry.

24 **FACTUAL ALLEGATIONS RELATING TO PLAINTIFF**

25 56. In May 2021, Plaintiff and his wife were in the market for a new home. He
26 had been assured that given his credit history, Plaintiff would easily be pre-approved for a
27 mortgage loan.
28

1 57. Having located a home that met their needs and that they wished to purchase,
2 Plaintiff sought preapproval for a loan with non-party Homeowners Financial.

3 58. On May 5, 2021, Homeowners Financial purchased a consumer report
4 regarding Plaintiff from Defendant Advantage Plus.

5 59. That same day, Advantage Plus purchased Plaintiff's credit files from
6 Equifax, Experian, and Trans Union and assembled and merged their credit information
7 into a credit report, which it sold to Homeowners Financial.

8 60. The credit report prepared by Advantage Plus showed Equifax and Trans
9 Union were reporting Plaintiff as "deceased" with no credit score.

10 61. The credit report prepared by Advantage Plus also included information
11 about a line of credit with Mariner Finance. This information was clearly derogatory – the
12 account status was listed as "BANKRUPTCY" – and it was also older than seven years:
13 the date of last activity listed on the account was March 17, 2014, more than seven years
14 prior to the date of the report.

15 62. Based on the report produced by Advantage Plus, Homeowners Financial
16 denied Plaintiff's home mortgage loan application.

17 63. The credit report that Advantage Plus sold to Homeowners Financial was
18 patently inconsistent—it contained Plaintiff's Experian credit score (an indication that
19 Plaintiff was alive) but did not contain a credit score from Equifax and Trans Union and,
20 instead, stated that his credit file was not scored because he was deceased.

21 64. Advantage Plus made no effort to determine whether Plaintiff was in fact
22 deceased prior to publishing its report. Advantage Plus could have easily reached out to
23 Plaintiff and allowed him to prove he was alive through the submission of basic
24 documentation. Advantage Plus could have also reached out to the Big Three to resolve
25 the inconsistencies in the information it received.

lines (1) with adverse statuses and (2) a date of last activity more than seven years prior to the date of the report.

72. The Classes satisfy the requirements of Fed. R. Civ. P. 23(b)(3).

73. Numerosity: The Classes are so numerous that joinder of the claims of all class members is impractical. Membership in the Classes can be ascertained through Defendant's records.

74. Existence and Predominance of Common Questions of Law and Fact: Common questions of law and fact exist as to all class members. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other things: (a) whether Defendant blindly includes whatever information it obtains from the Big Three into its reports without any procedure to assure the accuracy or completeness of the underlying data; (b) whether this conduct violated the FCRA; and (c) whether the violations were willful, reckless, knowing, or intentionally committed in conscious disregard of the Plaintiff's and class members' rights.

75. Typicality: Plaintiff's claims are typical of the claims of each class member and all claims are based on the same facts and legal theories. Plaintiff, as every class member, alleges violations of the same FCRA provision, 15 U.S.C. § 1681e(b). The claims challenge Defendant's consumer reporting procedures and do not depend on any individualized facts. For purposes of class certification, Plaintiff seeks only statutory and punitive damages. Such damages are appropriate in circumstances like this one where injuries are particularized and concrete, but difficult to quantify, rendering the recovery of class statutory damages ideal and appropriate.

76. Adequacy: Plaintiff will fairly and adequately protect the class members' interests. Plaintiff has retained counsel experienced in handling actions involving unlawful practices against consumers and class actions. Neither Plaintiff nor his counsel have any interests that might cause them not to vigorously pursue this action. Plaintiff is aware of his responsibilities to the class members and has accepted such responsibilities.

1 81. Defendant assembled, merged, and resold patently false consumer reports
2 concerning Plaintiff and Not Deceased Class members, incorrectly indicating that they
3 were deceased.

4 82. Despite actual and implied knowledge that Plaintiff and the Not Deceased
5 Class members were not dead, Defendant readily sold such false reports to one or more
6 third parties, thereby misrepresenting Plaintiff and Not Deceased Class members and their
7 creditworthiness.

8 83. Defendant violated 15 U.S.C. § 1681e(b) by failing to establish or to follow
9 reasonable procedures to ensure maximum possible accuracy in the preparation of the
10 credit reports and credit files it published and maintained concerning Plaintiff and Not
11 Deceased Class members.

12 84. As a result of Defendant's conduct, Plaintiff and the Not Deceased Class
13 suffered concrete harm including but not limited to financial harm, harm to credit
14 opportunities and reputational harm.

15 85. Defendant's violation was willful, rendering it liable for statutory and
16 punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. §
17 1681n.

18 86. Defendant's conduct was willful because it was carried out in knowing or
19 reckless disregard for consumers' rights under the FCRA. Defendant's conduct was
20 intentionally accomplished through its intended procedures; these procedures have
21 continued despite the fact that other CRAs have been subject to court decisions and
22 consumer complaints critical of similar conduct; and Defendant will continue to engage in
23 this conduct because it believes there is greater economic value in selling over-inclusive
24 consumer reports with facial inconsistencies than engaging in the due diligence that would
25 result in producing accurate reports.

1 Dated: **December 8, 2021**

s/Mark L. Heaney

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